

Commodity Futures Trading Commission

§ 190.10

to all public customers. Partial distributions, other than the transfers referred to in §190.06 and paragraph (d)(2) of this section, made prior to the final net equity determination date must be made pursuant to a preliminary plan of distribution approved by the court, upon notice to the parties and to all customers, which plan requires adequate security to the debtor's estate for the nonrecovery of any overpayments by the trustee and distributes an equal percentage of net equity to all public customers.

(6) *Margin payments.* The trustee may make margin payments on behalf of any account which do not exceed the funded balance of that account.

[48 FR 8739, Mar. 1, 1983; 48 FR 15122, Apr. 1, 1983, as amended at 59 FR 17471, Apr. 13, 1994; 67 FR 58298, Sept. 13, 2002]

§ 190.09 Member property.

(a) *Member property.* "Member property" means, in connection with a clearing organization bankruptcy, the property which may be used to pay that portion of the net equity claim of a member which is based on its house account.

(b) *Scope of member property.* Member property shall include all money, securities and property received, acquired, or held by a clearing organization to margin, guarantee or secure the proprietary account, as defined in §1.3(y) of this chapter, of a clearing member: *Provided, however,* That any guaranty deposit or similar payment or deposit made by such member and any capital stock, or membership of such member in the clearing organization shall also be included in member property after payment in full of that portion of the net equity claim of the member based on its customer account and of any obligations due the clearing organization which may be paid therefrom in accordance with the by-laws or rules of the clearing organization, including obligations due from the clearing organization to customers or other members.

§ 190.10 General.

(a) *Notices.* Unless instructed otherwise, all mandatory or discretionary notices to be given to the Commission under this part shall be directed to the

Washington, DC headquarters of the Commission (Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581) and addressed to the Secretariat, for the attention of the Director of the Division of Clearing and Intermediary Oversight. All such notices shall be in writing and shall be given by telegram or other similarly rapid means of communication. For purposes of this part, notice to the Commission shall be deemed to be given only upon actual receipt.

(b) *Request for exemption from time limit.* (1) A trustee or any other person charged with the management of a commodity broker which has filed a petition in bankruptcy, or against which such a petition has been filed, may for good cause shown request from the Commission an exemption from, or extension of, any time limit prescribed by this part 190: *Provided,* That no such exemption or extension will be granted for any time period established by the Bankruptcy Code, as amended, 11 U.S.C. 101 *et seq.*

(2) Such a request shall be made *ex parte* and by any means of communication, written or oral: *Provided,* That an oral request shall be confirmed in writing within one business day and such confirmation shall contain all the information required by paragraph (b)(3) of this section. Any such request shall be directed to the person as provided in paragraph (a) of this section, and at the address provided therein.

(3) Such a request shall state the particular provision of the part 190 rules with respect to which the exemption or extension is sought, the reason for the requested exemption or extension, the amount of time sought if the request is for an extension, and the reason why such exemption or extension would not be contrary to the purposes of the Bankruptcy Code and the Commission's part 190 regulations promulgated thereunder.

(4) The Director of the Division of Clearing and Intermediary Oversight, or such members of the Commission's staff acting under his direction as he may designate, on the basis of the information provided in any such request, shall determine, in his sole discretion, whether to grant, deny or otherwise respond to a request, and shall